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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 SHAWN CAWLEY,

Case No. 3:19-cv-00224-MMD-WGC

7 Plaintiff,

ORDER

8 v.

9 RUSSEL PERRY, *et al.*,

10 Defendants.

11 **I. DISCUSSION**

12 This action began with an application to proceed *in forma pauperis* and a *pro se*
13 civil rights complaint filed pursuant to 42 U.S.C. § 1983 by Shawn Cawley, a state
14 prisoner. (ECF No. 1, 1-1.) On March 19, 2021, the Court issued an order dismissing
15 Cawley's first amended complaint (ECF No. 7) with leave to amend and directed Cawley
16 to file a second amended complaint within 30 days. (ECF No. 8.) The 30-day period has
17 now expired, and Plaintiff has not filed an amended complaint or otherwise responded to
18 the Court's order.

19 Cawley's application to proceed *in forma pauperis* is granted. (ECF No. 1). Based
20 on the information regarding Cawley's financial status, the Court finds that Cawley is not
21 able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. §
22 1915. Cawley will, however, be required to make monthly payments toward the full
23 \$350.00 filing fee when he has funds available.

24 District courts have the inherent power to control their dockets and "[i]n the
25 exercise of that power, they may impose sanctions including, where appropriate . . .
26 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
27 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
28 to prosecute an action, failure to obey a court order, or failure to comply with local rules.

1 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for
2 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
3 (affirming dismissal for failure to comply with an order requiring amendment of complaint);
4 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to
5 comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone*
6 *v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure
7 to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
8 (affirming dismissal for lack of prosecution and failure to comply with local rules).

9 In determining whether to dismiss an action for lack of prosecution, failure to obey
10 a court order, or failure to comply with local rules, the court must consider several factors:
11 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
12 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
13 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
14 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
15 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

16 Here, the Court finds that the first two factors, the public's interest in expeditiously
17 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
18 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
19 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
20 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
21 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
22 disposition of cases on their merits—is greatly outweighed by the factors in favor of
23 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
24 the court's order will result in dismissal satisfies the "consideration of alternatives"
25 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
26 at 1424. The Court's order requiring Cawley to file an amended complaint within thirty
27 days expressly stated: "It is further ordered that, if Plaintiff fails to file an amended
28 complaint curing the deficiencies outlined in this order, this action will be dismissed with
prejudice for failure to state a claim." (ECF No. 8 at 12.) Thus, Cawley had adequate

1 warning that dismissal would result from his noncompliance with the Court's order to file
2 an amended complaint within thirty days.

3 **II. CONCLUSION**

4 It is therefore ordered that Cawley's application to proceed *in forma pauperis* (ECF
5 No. 1) is granted. Cawley shall not be required to pay an initial installment of the filing fee.
6 In the event that this action is dismissed, the full filing fee must still be paid pursuant to
7 28 U.S.C. § 1915(b)(2).

8 It is further ordered that the movant herein is permitted to maintain this action to
9 conclusion without the necessity of prepayment of any additional fees or costs or the
10 giving of security therefor. This order granting leave to proceed *in forma pauperis* shall
11 not extend to the issuance and/or service of subpoenas at government expense.

12 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the Prison
13 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
14 the account of **Shawn Cawley, #89819** to the Clerk of the United States District Court,
15 District of Nevada, 20% of the preceding month's deposits (in months that the account
16 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of
17 the Court will send a copy of this order to the Finance Division of the Clerk's Office. The
18 Clerk will send a copy of this order to the attention of Chief of Inmate Services for the
19 Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

20 It is further ordered that this action is dismissed with prejudice based on Cawley's
21 failure to file an amended complaint in compliance with this Court's March 19, 2021 order.

22 The Clerk of Court is directed to enter judgment accordingly and close this case.

23 DATED THIS 3rd Day of May 2021.

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26 MIRANDA M. DU
27 CHIEF UNITED STATES DISTRICT JUDGE
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